

HOUSE BILL 455

By McDonald

AN ACT to amend Tennessee Code Annotated, Title 59
and Title 69, Chapter 3, relative to water quality
control and mining.

WHEREAS, unsound surface coal mining practices permanently degrade the waters of
Tennessee; and

WHEREAS, clean water is an increasingly valuable resource throughout Tennessee and
the Southeast; and

WHEREAS, Tennessee's mountains are a permanent source of wealth and clean water
for all Tennesseans; and

WHEREAS, unsound surface mining practices trade permanent wealth and water for all,
for the short-term gain of a few; and

WHEREAS, Tennessee needs adequate scientific information to protect the environment
and water quality around surface coal mining operations; and

WHEREAS, surface coal mining operations must be restricted to limit impact on water
and scenic vistas; and

WHEREAS, surface coal mining results in discharges to navigable waters and applicants
for federal surface mining permits are therefore required under Section 401 of the Federal
Water Pollution Control Act, commonly known as the Clean Water Act, to obtain a certification
from Tennessee that such discharges will not violate water quality standards or other
appropriate requirements of Tennessee law and Tennessee may either deny such certification
or impose conditions in the certification which then become part of the federal surface mining
permit; and

WHEREAS, the Tennessee Wildlife Resources Agency has stated that mountain top removal and cross-ridge surface coal mining operations “invariably result in the loss of fish and aquatic life, aquatic habitat destruction and serious water pollution”; and

WHEREAS, Tennessee would benefit from updated scientific data and analysis when making Section 401 certification determinations for federal surface mining permits. Completing a new or supplemental Programmatic Environmental Impact Statement for the Tennessee program, addressing direct and indirect site specific and cumulative impacts in cooperation with the state using the best available scientific methods and research and publishing a record of decision in the Federal Register would provide this updated data and analysis; now; therefore, BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 69-3-108, is amended by adding the following language as a new, appropriately designated subsection:

(___)(1) Under no circumstances shall the commissioner issue or renew a permit, certification, or variance that would allow:

(A) Surface coal operations, or resulting waste, fill or in-stream treatment within one hundred feet (100') of any waters of the state; provided, however, that a permit, certification, or variance may be issued or renewed for operations to improve the quality of streams previously disturbed by mining; or

(B) Surface coal mining operations to alter or disturb any ridge line that is above two thousand feet (2,000') elevation above sea level, such elevation being determined using the most current edition of the United States forest service's publication, Ecological Subregions of the United States. This subsection does not prohibit any otherwise allowable surface coal mining above two thousand feet (2,000') elevation above sea level that does not alter or disturb a ridgeline;

(2) The requirements of this subsection do not apply to surface coal mining activities that are only incidental to underground mining if the commissioner determines that surface disturbance and effect is limited to that required to conduct legal underground mining;

SECTION 2. The provisions of this act are declared to be remedial in nature and the provisions of this act shall be liberally construed to effectuate its purposes.

SECTION 3. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity or affect shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 4. This act shall take effect upon becoming law, the public welfare requiring it.